

No 2635

1. H. B. Co. Memorials 2635
2. Puff-bloom Agricultural Co. 2635A.

Bound separately.

See 2635
2635 A.

BRITISH AND AMERICAN JOINT COMMISSION ON THE
HUDSON'S BAY AND PUGET SOUND AGRICULTURAL
COMPANIES' CLAIMS.

TO THE HONORABLE THE COMMISSIONERS:

THE GOVERNOR AND COMPANY of Adventurers of
England trading into Hudson's Bay, commonly called **THE
HUDSON'S BAY COMPANY**, claimants, submit the following
Memorial and statement of their claims upon the United States ;
and for facts and considerations in support of such claims, respect-
fully declare :—

That, in the year 1846, and for a great number of years previous
thereto, the Hudson's Bay Company were in the free and full enjoy-
ment, for their own exclusive use and benefit, of certain rights, posses-
sions, and property of great value, within and upon the Territory on the
North-west Coast of America, lying Westward of the Rocky Mountains,
and South of the 49th parallel of North latitude ; such rights consisting
as well in extensive and valuable tracts of land, whereupon numerous
costly buildings and enclosures had been erected and other improvements
had been made, and then subsisted, as of a right of trade which was
virtually exclusive, and the right of the free and open navigation of the
River Columbia within the said Territory.

That the rights, possessions, and property thus held and enjoyed by
the Hudson's Bay Company, had been acquired while the said Territory
was in the ostensible possession, and under the Sovereignty and Govern-
ment of the Crown of Great Britain, and the Company held and
enjoyed the same, with the knowledge and consent, and under recogni-
tions, both express and implied, of the Crown of Great Britain, and by
persons acting under its authority.

That, by the Treaty concluded between Great Britain and the United
States of America, on the 15th day of June, 1846, while the Hudson's Bay
Company were in the full and free possession and enjoyment of their said
rights, it was in effect declared to be desirable for the future welfare of
both Countries, that the state of doubt and uncertainty, which had there-
fore prevailed, respecting the Sovereignty and Government of the Terri-
tory on the North-West Coast of America, lying Westward of the Rocky
Mountains, should be finally terminated by an amicable compromise of
the rights mutually asserted by the two parties, upon such terms of settle-
ment as might be agreed upon ; and thereupon, by Article I. of the said
Treaty, the line of boundary to be thereafter observed between the Terri-
tories of Great Britain, and those of the United States of America, then in

question, was established by mutual compromise and agreement.

That, by Article III. of the said Treaty it was provided : That in the future appropriation of the Territory South of the 49th parallel of North latitude, as provided in Article I. of the said Treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who might be already in the occupation of land or other property lawfully acquired within the said Territory, should be respected ; and by Article II. of the same Treaty it was further provided, that from the point at which the 49th parallel of North latitude should be found to intersect the Great Northern branch of the Columbia River, the navigation of the said branch should be free and open to the Hudson's Bay Company, and to all British subjects, trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described should in like manner be free and open.

That, under the settlement of the boundary line agreed upon by the said Treaty, and defined by the first Article thereof, the said territory, whereof the Hudson's Bay Company then had the actual and exclusive control, possession, use and enjoyment as aforesaid, fell within and under the Sovereignty and Government of the United States, and under a just construction of the said Treaty, and of the obligation therein assumed, that the possessory rights of the Hudson's Bay Company should be respected according to the true intent and meaning of the same, the United States became and were bound to uphold and maintain the said Company, in the free, undisturbed and continual occupancy, use and enjoyment of all the rights, possessions and property, then by them possessed and held, and to protect and indemnify them from aggression and injuries, by or through any person acting, or claiming to act, under the authority or the laws of the United States.

That the rights which the United States were so held to respect, and in the enjoyment of which they were bound to uphold and maintain the Company, consisted of :—

First,—The free and undisturbed possession, use and enjoyment in perpetuity, as owners thereof, of all the posts, establishments, farms and lands held and occupied by them, for purposes of culture or pasturage, or for the convenience of trade, with all the buildings and other improvements thereupon.

Secondly,—The right of trade in furs, peltries and other articles, within and upon the whole of the said Territory, and the right of cutting timber thereupon, for sale and exportation.

Thirdly,—The right to the free and open navigation of the Columbia River, from the point at which the 49th parallel of North latitude intersects the Great Northern branch of the said river, down to the ocean, with a like free and open use of the portages along the said line.

That the said rights have not been respected, according to the terms of the said Treaty, and the obligation of the United States resulting therefrom : but on the contrary, by and through the aggressions and pro-

ceedings of persons acting, or claiming to act, under the authority of the Government, or of the laws of the United States, have been violated and restricted, and in great part extinguished and destroyed; and the Company by reason of the said aggressions and proceedings have been compelled in many cases to relinquish the same.

That, by the Treaty concluded on the 1st day of July, 1863, it was agreed that all questions between the United States authorities on the one hand, and the Hudson's Bay Company on the other, with respect to the possessory rights and claims of the latter, should be settled by the transfer of those rights and claims to the Government of the United States for an adequate money consideration.

And the claimants now submit a detailed statement, and valuation of the said rights, severally, under their distinct heads or classes; and of the claim of the Hudson's Bay Company under and by virtue of the said Treaty and of the premises herein set forth:

I. LANDS AND TRADING ESTABLISHMENTS.

The forts, posts, establishments, farms, pastures, and other lands, with the buildings and improvements thereupon, held and possessed within the said Territory by the Hudson's Bay Company, for their own sole use and benefit, at the time of the said Treaty of the 15th June, 1846, and for a long time before; which had, in some instances, been acquired from prior occupants, and in others, had been erected and made, and originally settled and occupied by the Company, were as follows:—

The Post at VANCOUVER, so called, consisting of a stockaded fort, with dwelling houses, store houses, school houses, houses for servants, shops, barns, and other outbuildings, with a stockade and bastions, erected at great cost and of the value of fifty-five thousand pounds sterling (£55,000); other dwelling houses and granaries, dairies, barns, stables, and farm buildings appurtenant to the said post for the purposes of farming and trade, built at various points near to the main post at Vancouver, and on Sauv 's Island, together with saw mills and flouring mills, forges, workshops, and store houses, all erected at a great cost at the time, and of the value of forty-five thousand pounds sterling (£45,000); the tract of land occupied, possessed, and used by the Company for its post at Vancouver, including its stations, enclosed and cultivated fields, and the pasturage for its cattle, horses and sheep, extending in front along the bank of the Columbia River, about twenty-five miles, and backward from the said River about ten miles, and Menzies' Island, so called, occupied, and used for pasturage; these tracts of land, with the agricultural improvements made thereupon, at a great cost, were, at the time of the said Treaty, of the value of seventy-five thousand pounds sterling (£75,000.)

The said several sums making together the entire sum of one hundred and seventy-five thousand pounds sterling..... (£175,000) equal to eight hundred and fifty-one thousand six hundred and sixty-six dollars and sixty-seven cents..... (\$851,666.67.) the claimants aver to be the value of the fort, buildings, land and

establishment at and near Vancouver and on Sauvé's Island, which they are entitled to claim and receive for the same.

A large portion of the land thus occupied, possessed and used, has, since the 15th day of June, 1846, been taken from the possession of the Company by American settlers claiming under the land laws of the United States, and the Company was dispossessed of the fort and establishment at Vancouver, and the land near thereto, by the orders of the military officers of the United States, in the year 1860.

The Post at CHAMPOEG, consisting of one dwelling house, one granary, and outbuildings, all of the value of three thousand pounds sterling (£3,000); and of the enclosed land of the value of two hundred pounds sterling (£200); and, in addition, certain town lots in the town of Champoeg, purchased of American settlers, of the value of two hundred pounds sterling (£200); making together the entire sum of three thousand four hundred pounds sterling..... (£3,400) equal to sixteen thousand five hundred and forty-six dollars and sixty seven cents (\$16,546.67.

The Post at the mouth of the COWELTZ RIVER, consisting of dwelling house, granaries, and outbuildings, erected by the Company, of the value of four hundred pounds sterling (£400); and the land occupied and used by them of the value of one hundred pounds sterling (£100) making together the entire sum of five hundred pounds sterling (£500) equal to two thousand four hundred and thirty-three dollars and thirty three cents.. (\$2,433.33.

The Post at FORT GEORGE, commonly called Astoria, consisting of dwelling houses, store houses, and outbuildings, acquired by the Company from the prior occupants, of the cost and value of seven hundred and fifty pounds sterling (£750); and two acres of land whereupon the said post is built, and thereto appertaining, possessed and used by the Company, and being of the value of one hundred pounds sterling (£100); making together the entire sum of eight hundred and fifty pounds sterling..... (£850) equal to four thousand one hundred and thirty-six dollars and sixty seven cents (\$4,136.67.

This post was taken possession of in 1849-50 by the officers of the United States.

The Post at CAPE DISAPPOINTMENT, consisting of a dwelling house and store erected by the Company, of the value of one thousand pounds sterling (£1,000); and the land appertaining to the post occupied, used and possessed by them, being one mile square, and of the value of two thousand pounds sterling (£2,000); making together the entire sum of three thousand pounds sterling..... (£3,000) equal to fourteen thousand six hundred dollars (\$14,600.00.

The last mentioned land, or a portion of it, since the date of the said Treaty, was taken possession of by the officers of the United States for a light house or other public purpose.

The Post at CHINOOK or Pillar Rock—a fishing station—consisting of a curing house erected by the Company, of the cost and value of two hundred pounds sterling (£200); and the land used and occupied by them for said station, of the value of one hundred pounds sterling (£100); making together the entire sum of three hundred pounds sterling..... (£300) equal to one thousand four hundred and sixty dollars ... (\$1,460.00.)

The Post at UMPQUA, consisting of dwelling house, barn, stables, and outbuildings, erected by the Company, of the cost and value of three thousand pounds sterling (£3,000); and the land used and occupied by them for farms and pasturage, being a mile square in extent, a portion of which was fenced and cultivated, all of the value of two thousand pounds sterling (£2,000); making together the entire sum of five thousand pounds sterling..... (£5,000) equal to twenty-four thousand three hundred and thirty-three dollars and thirty-three cents..... (\$24,333.33.)

The whole of this last mentioned land is now occupied by an American settler, claiming to hold the same under the laws of the United States.

The Post of NEZ-PERCE, commonly called Walla Walla, consisting of two dwelling houses and servants' houses, storehouses and other buildings and outbuildings, walls and bastions, all built by the Company, of Adobé brick, and of the cost and value of three thousand two hundred pounds sterling (£3,200); the land on the Columbia River occupied and used as belonging to the said post, and also the land along the bank of the said river used for the landing of the Company, of the value of ten thousand pounds sterling (£10,000); the lands surrounding the fort, used as pasturage, of the value of two thousand pounds sterling (£2,000); the farm near the Post, being of some thirty acres, more or less, in extent, of the value of one thousand five hundred pounds sterling (£1,500); making together the entire sum of sixteen thousand seven hundred pounds sterling..... (£16,700) equal to eighty-one thousand two hundred and seventy-three dollars and thirty-three cents..... (\$81,273.33.)

This post and the lands were abandoned by the servants of the Company under the orders of the United States authorities in 1855.

The Post at FORT HALL, consisting of houses, shops, stores, mills and outbuildings, horse parks and walls, all of Adobé brick, and of the value of three thousand pounds sterling (£3,000); the lands enclosed and cultivated, of the value of one thousand pounds sterling (£1,000); and the lands occupied and used for the pasturage of horses and cattle, of great extent, and of the value of one thousand pounds sterling (£1,000); making together the entire sum of five thousand pounds sterling (£5,000) equal to twenty-four thousand three hundred and thirty-three dollars and thirty-three cents..... (\$24,333.33.)

This post was necessarily abandoned by the Company on account

of hostilities between the United States and the Indian tribes in 1856.

The Post at **BOISE**, consisting of houses and outhouses, buildings, wall and bastions and horse-parks, all built of Adobé brick, and of the cost and value of one thousand five hundred pounds sterling (£1,500) ; about three miles square of land around the post, used and occupied by the Company for the purpose of agriculture and pasturage, all of the value of two thousand pounds sterling (£2,000) ; making together the entire sum of three thousand five hundred pounds sterling..... (£3,500) equal to seventeen thousand and thirty-three dollars and thirty-three cents..... (\$17,033.33.)

This post was necessarily abandoned by the Company in consequence of the hostilities between the United States and the Indian tribes in 1855.

The Post at **OKANAGAN**, consisting of dwelling houses, servants houses, storehouses, outbuildings, all of Adobé, stockade and bastions erected by the Company, and of the value of two thousand five hundred pounds sterling (£2,500); thirty acres of land at the fort, used, occupied and cultivated by the Company, of the value of one thousand pounds sterling (£1,000); and near and belonging thereto, other lands for the pasturage of herds of horses, of the value of five hundred pounds sterling (£500) ; making together the entire sum of four thousand pounds sterling (£4,000) equal to nineteen thousand four hundred and sixty-six dollars and sixty-seven cents (\$19,466.67.)

The Post at **COLVILLE**, consisting of dwelling houses, servants' houses, shops, stores, outbuildings, stables, barns, yards, stockades and bastions, flouring mills and appurtenances, all erected by the Company, and of the cost and value of ten thousand pounds sterling (£10,000) ; three hundred and fifty acres of land, occupied and used and cultivated as farm land, and about five miles square of land occupied and used for pasturage of their cattle and horses, of the value of five thousand pounds sterling (£5,000) ; the White Mud Farm (appurtenant to this post) with a house, barn and stable, store and outbuildings erected upon it by the Company, of the cost and value of one thousand pounds sterling (£1,000) ; the land used and occupied as a farm, thirty acres in extent, and of the value of five hundred pounds sterling (£500) ; making together the entire sum of sixteen thousand five hundred pounds sterling..... (£16,500) equal to eighty thousand three hundred dollars (\$80,300.00.)

The Post at **KOOTANAI**s, consisting of houses and stores erected by the Company, of the cost and value of five hundred pounds sterling (£500) ; the land occupied and used for the post, and near thereto, of small extent, of the value of five hundred pounds sterling (£500) ; making together the entire sum of one thousand pounds sterling (£1,000) equal to four thousand eight hundred and sixty-six dollars and sixty-seven cents..... (\$4,866.67.)

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The Post at FLAT-HEADS, consisting of dwelling houses and store, and of a small piece of land enclosed as a horse yard, of the value of six hundred pounds sterling..... (£600) equal to two thousand nine hundred and twenty dollars... (\$2,920.00.)

All these posts were established and maintained for the support of their servants, and of others in the employment of or trading with the Company, and were not only indispensable for carrying on their trade in the country South of the 49th parallel of North latitude, but were also of great value for the support of their posts and trade in the country North of that parallel. They were connected with and dependent upon each other, and were of greater value to the Company when used together. The farms and pasture lands were also of great annual value.

It may be added, that the discoveries of gold, and other minerals, which have been made within a few years past upon lands within the territory occupied by the Company, prove their value to be much higher than any estimate, which could have been put upon them before their general mineral wealth was known; and although it is not intended to urge this fact as a distinct ground of claim, yet it is manifestly fair, that it should not be without influence in the assessment to be made by the Commissioners.

The Company have been, as before stated, deprived of the possession of some of their posts and farms and other lands, by American settlers claiming under the land laws of the United States; of some by the action of the Officers of the United States; and of others by the hostilities between the United States and Indian tribes; which said tribes had, until the Treaty of the 15th June, 1846, been under the control of, and at peace with the said Company.

The privation of the annual profits and rents of these farms and lands, and the occupation of their posts, and the compelled abandonment of the said posts and farms, and lands, have caused to the Company, damage and loss to an amount exceeding fifty thousand pounds sterling (£50,000.)

The value of the several forts, posts, establishments, farms, pasturages and lands, with the buildings and improvements thereon, amounts in all to the sum of two hundred and thirty-five thousand three hundred and fifty pounds sterling (£235,350); making, together with the sum of fifty thousand pounds sterling (£50,000) for loss suffered, as stated, the entire sum of two hundred and eighty-five thousand three hundred and fifty pounds sterling..... (£285,350) equal to one million three hundred and eighty-eight thousand seven hundred and three dollars and thirty-three cents..... (\$1,388,703.33.)

Which the Hudson's Bay Company claim and are entitled to receive from the United States.

II. RIGHT OF TRADE.

The chief business of the Hudson's Bay Company in the year 1846, and for a great number of years before, was, and now is, the trade with Indian tribes in furs, peltries, and other articles. It was a trade of

great magnitude, carried on in Oregon over a wide range of country, and involved an extensive foreign commerce. Large sums of money were annually expended in it, and the returns were highly profitable, and important to the general prosperity of the Company.

For the proper and beneficial carrying on of that trade, the Company required, not only to hold and possess the posts, establishments, farms, and other lands already described, but also to have the control, possession, and use of extensive tracts of country; and they had in fact, at and before the date of the Treaty of the 15th June, 1846, in their control, possession, and use, for such purposes, a large portion of the country lying as hereinbefore mentioned on the North-West coast of America, to the West-ward of the Rocky Mountains, South of the 49th parallel of North latitude, and known as Oregon. And they had therein and thereupon a right of trade which was virtually exclusive.

The profits derived from their said trade, before and in the year 1846, exceeded in each year the sum of seven thousand pounds sterling.

And such right of trade, and the control, possession, and use, of the said Territory for the purposes thereof, independently of their foreign commerce and the sale of timber, exceeded in total value the sum of two hundred thousand pounds sterling.

Under the settlement of the boundary line by the Treaty of the 15th June, 1846, the said Territory fell under the Sovereignty and Government of the United States; and by reason thereof, and of the acts and proceedings had and taken, under and by colour of the authority and of the laws of the United States, the control, possession, and use of the said Territory by the Hudson's Bay Company, for the purposes of their trade, and their rights in the exercise and carrying on of their trade in furs, peltries, and other articles, as well as their trade in the shipment and sale of timber and their foreign commerce, were restricted and denied, and in effect wholly taken away and lost, and for their said rights, and the forced relinquishment and loss thereof they claim the said sum of two hundred thousand pounds sterling..... (£200,000) equal to nine hundred and seventy-three thousand three hundred and thirty-three dollars and thirty-three cents (\$973,333.33.)

III. NAVIGATION OF THE COLUMBIA RIVER.

The Hudson's Bay Company aver, that under the Treaty of the 15th June, 1846, by Article IV., of that Treaty, they have a right to the free and open navigation of the North branch of the Columbia River, from the point at which the same is intersected by the 49th parallel of North latitude, to the main stream, and thence to the ocean, with free access and passage into and through the said river or rivers, and that British subjects trading with them have an equal right of navigation, and that to the Company, and to those thus trading with them, the portages of the said river or rivers along the lines thus described, ought to be and of right are, free and open.

The right thus to navigate the said river, or rivers, and to pass unobstructed over their portages, was and is of great value to the Company, and is also of great and increasing political and national value to the United States, and for its relinquishment and transfer, the Company claim and are entitled to receive the sum of three hundred thousand pounds sterling (£300,000) equal to one million four hundred and sixty thousand dollars (\$1,460,000.)

In addition to the special statements hereinbefore contained, the Hudson's Bay Company submit, that throughout a long series of years, they expended large sums of money, and devoted much labour and time in efforts to bring the native population into such a condition, that safe and profitable relations, in regard to trade and general intercourse could be established with them. The exploration of the country, the expenditure for labour, and of the parties engaged, the opening of roads, the strong force required as a protection against the Indians, their conciliation brought about, sometimes by a resort to forcible measures, but chiefly by liberal dealing, effected a great change in the condition of the country, rendering it fit for immediate settlement. These were substantial benefits to the Government and people of the United States, under whose Sovereignty this Territory fell, and could not have been secured without a very large outlay. It is, of course, impossible to give any minute details of expenditures of this class, and of the advantages which the United States have derived from them, but the justice of extending to the Hudson's Bay Company liberal compensation, founded on these considerations, is too apparent to allow of any reasonable hesitation in admitting it.

It is obvious, that of the three classes of claims set forth in the foregoing Memorial, the first only consists of particulars which in their nature admit of direct proof of value, but with respect even to these, the Honorable The Commissioners are earnestly requested to notice, that circumstances which the claimants could in no degree prevent or control, have greatly impaired the means of producing such proof, in the positive and complete form which, otherwise, they would have been enabled to do. Among these circumstances may be specified, the aggressive acts, and the general conduct of American citizens, and of persons acting under the authority of the United States, commencing shortly after the 15th June, 1846, and continuing from year to year, by which the rights of the claimants under that Treaty were violated and denied, and their property and possessions were, in some instances, usurped and taken from them, and in others, were necessarily abandoned. This course of conduct was, perhaps, to be expected, from the anomalous position in which the Company were placed,—a foreign Corporation exercising a *quasi* sovereignty, and exclusive rights over territory transferred to a Power, whose policy in dealing with such territory was diametrically opposed to that which the Company pursued, and from which they derived their profits. But however this may be, it is an undoubted consequence to the Company, that their rights and possessions have been thereby made of comparatively little value, and the difficulty of obtaining evidence upon them has been rendered very

great. This difficulty has been essentially increased by the lapse of time since the claims first arose. A delay of seventeen years intervened, during which the United States, while failing to cause the rights of the Hudson's Bay Company to be respected, continued to refuse any satisfactory settlement of their demands. The inevitable effect of this delay, now extended to nearly twenty years, has been to remove by death, or otherwise, the greater number of important witnesses, and to weaken the evidence which is still available, both by the remoteness, in point of time, of the facts to be established, and by reason of the natural decay or of the disappearance of much which constituted the value of the rights and possessions, for which the present claims are made.

With respect to the second, and third classes of claims set forth, the claimants solicit the attention of the Honorable The Commissioners, to the fact before alluded to, that they are of a nature which does not admit of a formal and precise valuation by testimony. Consisting as they do of important rights of trade, and of other rights of a public and national character, they are manifestly of great value. But the estimation to be put upon them, and the amount of the money consideration to be paid for their relinquishment and transfer, must be settled by the judgment of the Commissioners, founded upon their own experience and knowledge, aided by public documents and the recorded opinions of statesmen and writers of authority, and by such general estimates under oath as it may be possible to obtain.

The claimants have made the foregoing statement and observations with respect to evidence, for the purpose of urging for the serious consideration of the Honorable The Commissioners, that in their examination and decision of the present claims, they ought not to be restrained by the rules which are observed in the trial of ordinary issues in Courts of Law. Those rules, under the circumstances, and for the reasons above declared, the claimants contend should be liberally modified and relaxed in the present case; and they respectfully, yet formally and solemnly, protest that a strict application of them, in the consideration of their claim, would be unreasonable and unjust.

In conclusion, the Hudson's Bay Company submit that upon the facts and circumstances, and for the reasons and considerations herein set forth, they are entitled to claim and receive from the United States the several sums here following:

First,—For their forts, posts, establishments, farms, pasturage, and other lands, with the buildings and improvements thereon, as hereinbefore set forth, the sum of two hundred and eighty five thousand three hundred and fifty pounds sterling (£285,350.)

Secondly,—For the right of trade, as hereinbefore set forth, the sum of two hundred thousand pounds sterling (£200,000.)

Thirdly,—For the right of the free navigation of the Columbia River, as hereinbefore set forth, the sum of three hundred thousand pounds sterling (£300,000.)

The said several sums making together the entire sum of seven hundred and eighty-five thousand three hundred and fifty pounds

sterling..... (£785,350)
 equal to three million eight hundred and twenty-two thousand and
 thirty-six dollars and sixty-seven cents (\$3,822,036.67.)

And the Hudson's Bay Company ask that the Honorable the Commissioners will, after due examination, maintain the said claim as just and reasonable, and will decide that the United States ought to pay to the Company, in discharge of their said claims and rights, and for the transfer of them, the said sum of seven hundred and eighty-five thousand three hundred and fifty pounds, in Sterling money of Great Britain, equal to three million eight hundred and twenty-two thousand and thirty-six dollars and sixty-seven cents in gold, to be paid at the time and in the manner provided by the said Treaty of the 1st July, 1863.

And the claimants declare, that for the said sum of money, or for such other sum as the Honorable the Commissioners may justly award, they are ready and willing to transfer to the United States all their rights and claims according to the terms of the said two Treaties.

DATED, 8th April, 1865.